

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAYNE BERRY,

Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY
AMERICAS (FKA BANKERS TRUST
COMPANY) and JP MORGAN CHASE
BANK in their separate capacities and as
agents for the pre- and post-petition lenders of
Fleming Companies, Inc.; GENERAL
ELECTRIC CAPITAL CORPORATION;
C&S WHOLESALE GROCERS, INC.; THE
POST-CONFIRMATION TRUST OF
FLEMING COMPANIES, INC.; ROBERT
KORS; CORE-MARK HOLDINGS INC.
AND DOES 1 TO 200,

Defendants.

Case No. 01:07 CV 7634 (WHP)

ECF Case

AFFIDAVIT OF F. WADE ACKERMAN IN SUPPORT OF DEFENDANTS POST
CONFIRMATION TRUST'S AND ROBERT KORS' RESPONSE IN OPPOSITION TO
AFFIDAVIT OF TIMOTHY J. HOGAN APPLYING FOR RELIEF PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 56(F)

KIRKLAND & ELLIS LLP

F. Wade Ackerman (*pro hac vice* pending)

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Los Angeles, California 90017

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Facsimile: (213) 680-8500

Email: wade.ackerman@kirkland.com

Counsel for Defendants Fleming Post Confirmation
Trust and Robert Kors

AFFIDAVIT OF F. WADE ACKERMAN

I, F. Wade Ackerman, testify as follows:

1. I am an associate at the law firm Kirkland & Ellis LLP. My firm has been retained to represent Defendants the Post-Confirmation Trust ("PCT") and Robert Kors in this lawsuit. I have personal knowledge of the facts set forth herein and, if called to testify, could and would testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of relevant excerpts from email discussions threads between Plaintiff's attorney, Timothy Hogan, and Michael Baumann and others ranging from January 16, 2008 to January 30, 2008.

3. Attached as Exhibit B is a true and correct copy of relevant excerpts from email discussions threads between Plaintiff's attorney, Timothy Hogan, and Michael Baumann and others ranging from February 15, 2008 to February 16, 2008.

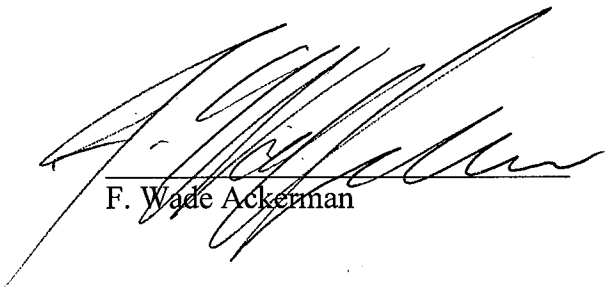
4. Attached as Exhibit C is a true and correct copy of relevant excerpts from email discussions threads between Plaintiff's attorney, Timothy Hogan, and Michael Baumann and others ranging from February 27, 2008 to February 28, 2008.

5. Attached as Exhibit D is a true and correct copy of letter dated December 18, 2007 from Plaintiff's attorney, Timothy Hogan, addressed to the Office of Disciplinary Counsel in Hawaii.

6. Attached as Exhibit E is a true and correct copy of the Court's transcript of a February 13, 2008 hearing in this matter.

7. Attached as Exhibit F is a true and correct copy of relevant excerpts of email discussion threads between Wesley Ichida and Plaintiff's attorney, Timothy Hogan, on February 27, 2008.

So sworn under penalty of perjury under the laws of the United States of America in Los Angeles, California on March 5, 2008.



F. Wade Ackerman

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☐ See Attached Document (Notary to cross out lines 1-6 below)
- ☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

Signature of Document Signer No. 1 _____

Signature of Document Signer No. 2 (if any) _____

State of California

County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on this

5th. day of MARCH, 20 08, by

Date Month Year

(1) F. WADE ACKERMAN

Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) X

(and

(2) _____

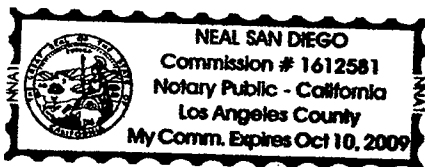
Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature

Neel San Diego

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

*Though the information below is not required by law, it may prove
valuable to persons relying on the document and could prevent
fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached DocumentTitle or Type of Document: AFFIDAVITDocument Date: 3/05/08 Number of Pages: 3

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT
OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER #2
Top of thumb here